

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

LAURA J. DOANE,

Plaintiff,

v.

MICHAEL ASTRUE, Commissioner of  
Social Security Administration,

Defendant.

CASE NO. **C07-5455RBL**

REPORT AND  
RECOMMENDATION

Noted for May 30, 2008

This matter has been referred to Magistrate Judge J. Kelley Arnold pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Magistrates Rule MJR 4(a)(4) and as authorized by Mathews, secretary of H.E.W. v. Weber, 423 U.S. 261 (1976). This matter has been briefed, and after reviewing the record, the undersigned recommends that the Court affirm the administrative decision.

INTRODUCTION

Plaintiff, Laura Doane, was born in 1961. She completed the 11<sup>th</sup> grade of high school, and later received her GED. Plaintiff has past relevant work experience as a hotel clerk or receptionist. She has one sibling, and she has never married. However, she has had a couple of extended relationships which, in two situations, ended at the boyfriend's suicide – once in 1994, and the other in 1999.

Plaintiff applied for social security benefits on August 27, 2003. Plaintiff alleges disability and an inability to work since March 23, 1999, due to back pain, neck pain, pain and numbness in the extremities, a partial amputation of the third left hand finger, and anxiety. The administration denied the

1 application, after a hearing before an administrative law judge ("ALJ"). The ALJ issued his decision on  
2 December 28, 2006.

3 Plaintiff filed the instant Complaint with the Court on August 28, 2007, challenging the denial of  
4 her applications for social security benefits. Specifically, Plaintiff contends: (1) the ALJ failed to  
5 properly consider Plaintiff's testimony regarding her symptoms and limitations; (2) the ALJ erred by  
6 discrediting examining physicians opinions; (3) the ALJ erred by discrediting the DSHS physical  
7 evaluations; (4) the ALJ erred in his interpretation of the medical evidence; (5) the ALJ erred by  
8 incorrectly assessing Plaintiff's residual functional capacity ("RFC"); and (6) the ALJ erred by failing to  
9 incorporate all of Plaintiff's impairments in the hypothetical posed to the vocational expert and by  
10 disregarding the hypothetical posed to the vocational expert by Plaintiff's representative at the hearing.

11 After reviewing the record, the undersigned finds the ALJ properly considered the two primary or  
12 threshold issues – the ALJ's review of the medical opinion evidence and plaintiff's credibility.  
13 Accordingly, the ALJ's decision is properly supported by substantial evidence and free of legal error.

#### 14 DISCUSSION

15 This Court must uphold the determination that plaintiff is not disabled if the ALJ applied the  
16 proper legal standard and there is substantial evidence in the record as a whole to support the decision.  
17 Hoffman v. Heckler, 785 F.2d 1423, 1425 (9th Cir. 1986). Substantial evidence is such relevant evidence  
18 as a reasonable mind might accept as adequate to support a conclusion. Richardson v. Perales, 402 U.S.  
19 389, 401 (1971); Fife v. Heckler, 767 F.2d 1427, 1429 (9th Cir. 1985). It is more than a scintilla but less  
20 than a preponderance. Sorenson v. Weinberger, 514 F.2d 1112, 1119 n.10 (9th Cir. 1975); Carr v.  
21 Sullivan, 772 F. Supp. 522, 525 (E.D. Wash. 1991). If the evidence admits of more than one rational  
22 interpretation, the Court must uphold the Secretary's decision. Allen v. Heckler, 749 F.2d 577, 579 (9th  
23 Cir. 1984).

#### 24 ***A. THE ALJ PROPERLY CONSIDERED PLAINTIFF'S CREDIBILITY***

25 Bunnell v. Sullivan, 947 F.2d 341 (9th Cir. 1991) (*en banc*), is controlling Ninth Circuit authority  
26 on evaluating plaintiff's subjective complaints. Bunnell requires the ALJ findings to be properly  
27 supported by the record, and "must be sufficiently specific to allow a reviewing court to conclude the  
28 adjudicator rejected the claimant's testimony on permissible grounds and did not 'arbitrarily discredit a

1 claimant's testimony regarding pain.'" Id. at 345-46 (quoting Elam v. Railroad Retirement Bd., 921 F.2d  
2 1210, 1215 (11th Cir. 1991)). When a claimant produces evidence of an underlying impairment that  
3 could reasonably produce pain or other symptoms, the ALJ can only reject claimant's testimony about the  
4 severity of his or her symptoms with "specific findings stating clear and convincing reasons for doing so."  
5 Smolen v. Chater, 80 F.3d 1273, 1281-82, 1284 (9<sup>th</sup> Cir. 1996).

6 An ALJ may reject a claimant's subjective complaints, if the claimant is able to perform  
7 household chores and other activities that involve many of the same physical tasks as a particular type of  
8 job. Fair v. Bowen, 885 F.2d 597, 603 (9th Cir. 1989). However, as further explained in Fair v. Bowen,  
9 *supra*, and Smolen v. Chater, *supra*, at 1288 (9th Cir. 1996), the Social Security Act does not require that  
10 claimants be utterly incapacitated to be eligible for benefits, and many home activities may not be easily  
11 transferrable to a work environment where it might be impossible to rest periodically.

12 Here, Plaintiff argues the ALJ failed to cite specific reasons for discrediting Plaintiff's allegation  
13 that she is unable to perform all regular, sustained work activity. The undersigned disagrees. The ALJ  
14 assessed Plaintiff's residual functional capacity, and in doing so, he properly addressed the issue of  
15 Plaintiff's allegations suggesting total disability. The ALJ explained his findings in detail, writing the  
16 following:

17 At the hearing, the claimant testified that she is unable to engage in work activity due to  
18 numbness in both hands, upper extremity pain, back pain, neck pain, and panic attacks.  
19 Ms. Doane testified that standing more than 30 minutes causes pain. She can sit up to 60  
20 minutes, then must stand for 15-20 minutes, and then sit for a short amount of time. She  
21 can lift five pounds, but not continuously, and cannot use her hands on a repetitive basis.  
22 She has experienced the suicide of five loved ones and is attending a bereavement course  
23 once a week. She does not do well with stress and isolates herself at times. She is not  
24 taking medication for panic attacks.

25 I have considered all the medical evidence and conclude that the evidence establishes that  
26 the claimant has severe neck pain due to degenerative disc disease of the cervical spine and  
27 a panic disorder with agoraphobia. However, the claimant has the retained residual  
28 functional capacity to lift 10 pounds frequently and 20 pounds occasionally, stand/walk 6  
to 8 hours, and sit 6 of 8 hours. She can frequently climb ramps/stairs and occasionally  
climb ladders/ropes/scaffolds. She can frequently balance and stoop and occasionally  
kneel, crouch and crawl. She should avoid concentrated exposure to vibration and hazards.  
She has no manipulative limitations. From a mental standpoint, the claimant is moderately  
limited in the ability to interact appropriately with the general public. She has the ability  
to perform both simple as well as more complex tasks and instructions and would be able  
to accept instructions from supervisors without too much difficulty. Crowded situations  
would cause panic symptoms, but treatment might alleviate these symptoms. She can  
perform tasks on a consistent basis without special modifications, and would be best in a  
work setting where she would not have to interact with the public on a regular basis. She  
can complete at least part time work and likely full time work without interruption from

1 her psychiatric illness.

2 In support of the above, the undersigned notes the lack of ongoing and significant  
3 objective clinical findings which would warrant a finding of disability. None of the  
4 claimant's treating physicians have described the claimant as suffering from a significant  
5 impairment which would render her unable to engage in substantial gainful activity.  
6 Though the claimant alleges that she has a great deal of back, neck and upper extremity  
7 pain which limits her ability to stand, sit and walk, the medical records show no indication  
8 of muscle wasting, deformity, gross muscle atrophy or neurological deficits. Treating  
9 physician records indicate the claimant was treated conservatively for her complaints, with  
10 no indication that her complaints were deemed of sufficient severity to refer her to a  
11 specialist or for further diagnostic testing. Despite the claimant's allegations of severe  
12 back pain, examination has been within normal limits. A thoracic spine x-ray in February  
13 2001 showed evidence of a mild dextrosciotic curve. No compression fractures were  
14 seen. (Exhibit 4F). In April 2005, Doctor Farjardo noted that examination of the back  
15 showed a normal range of motion. The lumbar spine was straight, and straight leg raising  
16 was negative. The claimant was neurologically intact. (Exhibit 13F). There is no  
17 evidence of ongoing treatment for back pain.

18 The allegations of pain and numbness in the upper extremities which prevents the claimant  
19 from performing repetitive activity with the hands is not supported by the record. The  
20 record shows that the claimant was treated for a partial amputation of the distal part of her  
21 left middle finger in January 2005 in an accident; however, there is no indication that she  
22 received ongoing treatment following this injury. The record shows that the claimant  
23 underwent right carpal tunnel release in March 2006. Follow-up records show the incision  
24 was thoroughly healed, with no signs of infection. In April 2006, the claimant appeared  
25 pleased with the results of her surgery. (Exhibits 17F, 19F). Physical therapy records in  
26 May 2006 indicate the claimant reported an overall improvement rating of 70%, and  
27 reported decreased pain and improved ability to perform activities of daily living. (Exhibit  
28 10F). The medical records do not document evidence of a severe impairment, nor was  
there any suggestion by any physician that her complaints had resulted in any restriction in  
her ability to function.

[Omitted]

Ms. Doane was diagnosed with a panic disorder with agoraphobia. Her Global  
Assessment of Functioning (GAF) was 65, which is indicative of only some mild mental  
limitations. The examiner opined that the claimant has the ability to perform both simple  
as well as more complex tasks. In fact she takes a great deal of pride in being able to cook  
for herself, perform some gardening, and do tasks as well as work on the computer. She  
seemed to be quite intelligent. She enjoys reading and likely would be able to learn and  
complete fairly complex tasks. Doctor Reuther opined that the claimant is able to accept  
instruction without difficulty. Working in crowded situations may induce some panic  
symptoms, but she could work at jobs without much public exposure. With treatment, it is  
likely she would be able to complete a full work week without interruptions from her  
psychiatric illness. (Exhibit 5F).

(Tr. 18-19).

The ALJ reasons - lack of medical evidence to support total disability, inconsistencies in  
Plaintiff's testimony and his demeanor at the hearing, and Plaintiff's daily activities - are clear and  
convincing. In particular, as noted above, the ALJ cited the medical evidence of record as well as  
Plaintiff's activities of daily living. As further explained below, the ALJ properly weighed and

1 interpreted the medical evidence, which does not support a finding of disability. The ALJ properly  
2 discounted Plaintiff's allegations of total disability.

3 ***B. THE ALJ PROPERLY ASSESSED THE MEDICAL EVIDENCE***

4 The ALJ is entitled to resolve conflicts in the medical evidence. Sprague v. Bowen, 812 F.2d  
5 1226, 1230 (9<sup>th</sup> Cir. 1987). He may not, however, substitute his own opinion for that of qualified medical  
6 experts. Walden v. Schweiker, 672 F.2d 835, 839 (11<sup>th</sup> Cir. 1982). If a treating doctor's opinion is  
7 contradicted by another doctor, the Commissioner may not reject this opinion without providing "specific  
8 and legitimate reasons" supported by substantial evidence in the record for doing so. Murray v. Heckler,  
9 722 F.2d 499, 502 (9<sup>th</sup> Cir. 1983). "The opinion of a nonexamining physician cannot by itself constitute  
10 substantial evidence that justifies the rejection of the opinion of either an examining physician or a  
11 treating physician." Lester v. Chater, 81 F.3d 821, 831 (9<sup>th</sup> Cir. 1996). In Magallanes v. Bowen, 881  
12 F.2d 747, 751-55 (9<sup>th</sup> Cir. 1989), the Ninth Circuit upheld the ALJ's rejection of a treating physician's  
13 opinion because the ALJ relied not only on a nonexamining physician's testimony, but in addition, the  
14 ALJ relied on laboratory test results, contrary reports from examining physicians and on testimony from  
15 the claimant that conflicted with the treating physician's opinion.

16 Here, Plaintiff contends the ALJ improperly evaluated the medical evidence, particularly the  
17 opinions and records provided by Dr. Brzenzinski-Stein, Dr. Ratcliffe, Dr. Lysak, Dr. Fjardo, and Dr.  
18 Lee. After reviewing the record and the ALJ's decision, the undersigned concludes the ALJ reasonably  
19 interpreted the medical evidence, which is inconsistent.

20 The ALJ, who is charged with reviewing the record as a whole in the context of the social security  
21 definitions and process of determining disability, concluded Ms. Doane retained the ability to perform  
22 work as a surveillance system monitor and clerical addresser (Tr. 22). Substantial medical evidence  
23 supports the ALJ's residual functional capacity assessment consistent with these vocations.

24 As noted above, the ALJ cited to many of the medical opinions that do not support a finding of  
25 disability in this case. The ALJ first summarize Plaintiff's medical history, specifically noting records  
26 from Dr. Wiese, Dr. Brown, Dr. Farjardo, Dr. Lee, Dr. Zhu, Dr. Reuther, Dr. Brzezinski-Stein, and Dr.  
27 Ratcliff (Tr. 15-18). The ALJ then explained why he accepted certain opinions rather than others. For  
28 example, he wrote:

1 In April 2005, Doctor Farjardo diagnosed the claimant with a generalized anxiety disorder.  
2 (Exhibit 13F). In June 2005, the claimant was prescribed medication for anxiety. She  
3 denied depression. She was continued on Ativan, to be used on an as-needed basis  
4 (Exhibit 19F/17-18). At the hearing, the claimant testified that she was not taking  
5 medication for panic attacks, although the record shows that her anxiety symptoms are  
6 decreased with psychotropic medication.

7 I note that the psychological reports performed by Doctors Brzenzinski-Stein and Ratcliffe,  
8 performed in November 2004 and March 2005 assessed significant functional mental  
9 limitations. Despite these findings, the undersigned finds that there are no supporting  
10 findings contained in their assessments report or elsewhere in the record. These examiners  
11 also did not cite objective findings that relate to the restrictions assessed; and their  
12 conclusions appear to be based upon the claimant's subjective complaints. Their minimal  
13 findings noted at the time of their written statements are not consistent with the extreme  
14 limitations assessed, nor are they consistent with the findings in the other evidence of  
15 record, as described above. Since the overwhelming weight of the treating physicians and  
16 the findings of the consultative psychiatric specialist refute these conclusions, they are  
17 accorded no evidentiary weight. (Exhibits 11F, 12F). As described previously, such  
18 extreme findings were not found in the comprehensive and detailed report of the  
19 psychiatric specialist. The findings of Dr. Reuther are well supported by the medical  
20 evidence and other evidence, and are consistent with the balance of the record. In  
21 addition, his findings are based on his review of the claimant's medical records, mental  
22 status testing, and psychological testing. (Exhibit 5F).

23 (Tr. 19-20).

24 Review of the medical record supports the ALJ's analysis. Dr. Brzezinski-Stein and Dr. Ratcliff  
25 opinions were largely in the form of check-box forms with few comments appended. Such forms are  
26 traditionally disfavored in Social Security litigation because they do not afford the reviewer the full  
27 context of the physician's opinion. Individualized medical opinions are preferable. *See Murray v.*  
28 *Heckler*, 722 F.2d 499, 501 (9th Cir. 1983) (expressing preference for individualized medical opinions  
over DDS check-off reports); *cf. Crane v. Shalala*, 76 F.3d 251, 253 (9th Cir. 1996) (ALJ permissibly  
rejected three psychological evaluations because they were check-the-box reports that did not contain  
explanations of the bases of their conclusions).

29 As for the opinions of Dr. Lee and Dr. Farjardo, the ALJ noted that Dr. Farjardo found Plaintiff to  
30 have a normal range of motion, a straight lumbar spine, and to be generally neurologically intact as of  
31 April 2005 (Tr. 18-19, 245-253). While Dr. Lee limited Plaintiff to sedentary work due to limitations in  
32 her right arm secondary to carpal tunnel syndrome, the ALJ noted that contemporaneous reports from  
33 Plaintiff's treating physicians indicated improvement due to a carpal tunnel release surgery. (Tr. 19,  
34 285-314, 344-402).

35 Plaintiff argues for a more favorable interpretation of the medical evidence. However, the ALJ's

1 interpretation was reasonable and properly supported. "When the evidence before the ALJ is subject to  
2 more than one rational interpretation, [the court] must defer to the ALJ's conclusion." Batson v. Comm'r  
3 of Soc. Sec. Admin., 359 F.3d 1190, 1193 (9th Cir. 2004).

4 CONCLUSION

5 Based on the foregoing discussion, the Court should affirm administrative decision. After  
6 reviewing the record, the undersigned finds no error in the two threshold issues. First, the ALJ properly  
7 discounted Plaintiff's testimony regarding the severity of his impairments, and second, the ALJ properly  
8 assessed the medical evidence. Accordingly, the undersigned also finds no error in the ALJ evaluation of  
9 Plaintiff's residual functional capacity, Plaintiff's ability to perform past relevant work or other certain  
10 types of work. Plaintiff's arguments that the ALJ erred in those findings is erroneously premised on the  
11 arguments that the ALJ failed to properly review the medical evidence and/or Plaintiff's credibility.

12 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the  
13 parties shall have ten (10) days from service of this Report to file written objections. *See also*  
14 Fed.R.Civ.P. 6. Failure to file objections will result in a waiver of those objections for purposes of  
15 appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the  
16 clerk is directed to set the matter for consideration on **May 30, 2008**, as noted in the caption.

17 DATED this 5th day of May, 2008.

18  
19 /s/ J. Kelley Arnold  
20 J. Kelley Arnold  
21 U.S. Magistrate Judge  
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